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By Hand Delivery and ECF

Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *In re Application of Orthogen International GmbH*, No. 1:24-mc-00504;
In re Orthogen International GmbH, No. 1:23-mc-00152-VSB

Dear Judge Broderick:

I represent Orthogen International GmbH (“Orthogen”) in the above-referenced proceedings — two petitions through which Orthogen seeks discovery pursuant to 28 U.S.C. § 1782 (“Section 1782”) for use in a lawsuit that it will be filing in Germany against two former licensees of its patented Regenokine Program, Dr. Douglas Schottenstein and Edward Capla (the “Contemplated German Proceeding”).

As set forth in the petitions, Orthogen has obtained evidence that Dr. Schottenstein and Edward Capla defrauded it out of millions of dollars in royalty fees by submitting reports to it that substantially understated (i) the number of Regenokine Program patient treatments administered by Dr. Schottenstein’s practice, Schottenstein Pain & Neuro PLLC (“NY Spine”), and (ii) the amounts that Dr. Schottenstein and Edward Capla were receiving in connection with those treatments. The reports resulted in Orthogen being paid substantially less than it should have been paid under the parties’ relevant license agreements (and in it being fraudulently induced to enter into the last of those agreements), and in Dr. Schottenstein and Edward Capla being paid substantially more. Orthogen also has obtained evidence that Edward Capla arranged it so that his parents, Judith and Tomas Capla, received a meaningful portion of his share of the excess payments.

Orthogen filed the first of the above-referenced petitions, *In re Orthogen International GmbH*, No. 1:23-mc-00152-VSB, on May 4, 2023, seeking Section 1782 discovery from Dr.

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Schottenstein and NY Spine (the “Schottenstein 1782”). *See* Schottenstein 1782, Dkt. 1. On May 15, 2023, Dr. Schottenstein challenged the petition through what he styled as a proposed order to show cause, *id.*, Dkt. 13, which was fully briefed as of May 23, 2023, *see id.*, Dkts. 13-20. At the same time Orthogen filed the Schottenstein 1782, it also filed a petition in the Southern District of Florida seeking 1782 discovery from Mr. Capla and his wife (the “Capla 1782”), which was challenged by Dr. Schottenstein and Mr. Capla. Those challenges were rejected by the Florida court, and Orthogen has now obtained 1782 discovery from Mr. Capla and his wife. Since filing the Schottenstein and Capla 1782s, Orthogen periodically has filed letters with this Court updating it on material developments with respect to the Capla 1782 and another 1782 petition it currently is pursuing in the Western District of Texas against two former employees of Dr. Schottenstein, Pearl Chan and Derek Lee (the “Texas 1782”).¹ Orthogen filed its most recent update letter with this Court on July 3, 2024. *See id.*, Dkt. 28.

Contemporaneous with filing of this letter, Orthogen is filing a second 1782 petition before this Court (*i.e.*, the second of the petitions in the “re” line of this letter), *In re Application of Orthogen International GmbH*, No. 1:24-mc-00504, through which it seeks Section 1782 discovery of Mr. Capla’s mother and father, Judith and Tomas Capla (the “Judith/Tomas 1782”). As detailed in the memorandum of law submitted in support of the Judith/Tomas 1782, (i) the subjects of the above-referenced Texas 1782, Ms. Chan and Mr. Lee, have provided Orthogen with evidence that Mr. Capla diverted a meaningful portion of his share of the unreported Regenokine Program money to his parents, and (ii) Orthogen thus needs discovery from them in order to, among other things, calculate the full scope of its damages for the Contemplated German Proceeding. Attached hereto are courtesy copies of the memorandum of law and other papers that Orthogen has filed in support of the Judith/Tomas 1782, as well as a courtesy copy of Orthogen’s above-referenced July 3, 2024 update letter in the Schottenstein 1782. In addition to justifying Orthogen’s entitlement to discovery from Judith and Tomas Capla, the papers that Orthogen has submitted in support of the Judith/Tomas 1782 update the Court on developments in the Capla 1782 and the Texas 1782 since Orthogen’s July 3, 2024 letter.

In filing the Judith/Tomas 1782, I marked it as related to the Schottenstein 1782 because (i) both applications seek evidence that pertains to the same underlying alleged conduct by Dr. Schottenstein and Mr. Capla, and that Orthogen is pursuing for the same purpose (to use to support its claims against Dr. Schottenstein and Mr. Capla in the Contemplated German Proceeding), and (ii) the two applications involve common questions of law and fact (namely, whether the applications involving the same underlying conduct satisfy the statutory requirements of Section 1782, and whether the discretionary factors favor the discovery Orthogen seeks).

I thank the Court for its consideration of both the previously-filed Schottenstein 1782 and the newly-filed Judith/Tomas 1782.

¹ The Capla 1782 is captioned *In Re: Orthogen International GmbH*, No. 9:23-cv-80743-DMM (S.D. Fla.) and the Texas 1782 is captioned *In re Application of Orthogen International GMBH*, No. 5:24-mc-687-OLG (W.D. Tex.).

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO P.C.

Respectfully submitted,

/s/ Christopher B. Harwood
Christopher B. Harwood

Copy to:

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